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4 REARDEN LLC, et al.,
5 Plaintiffs,
6 v.
7 THE WALT DISNEY COMPANY, et al.,
8 Defendants.
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10 Case No. 17-cv-04006-JST
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13 **ORDER DENYING DEFENDANTS'**
14 **MOTION FOR ATTORNEYS' FEES**
15 **PURSUANT TO 17 U.S.C. § 505**

16 Re: ECF No. 774
17

18 Pending before the Court is Defendant Walt Disney Pictures's ("Disney") motion for
19 attorneys' fees. ECF No. 774. The Court will deny the motion.

20 **I. BACKGROUND**

21 The factual and procedural background of this case is summarized in greater detail in the
22 Court's prior orders. ECF Nos. 60, 85, 297, 555, 758. In short, Plaintiff Rearden LLC developed
23 and owns MOVA Contour Reality Capture ("MOVA"), a program for capturing the human face to
24 create computer graphics characters in motion pictures.¹ In 2017, Rearden filed a series of
25 lawsuits, including this lawsuit against Disney, bringing copyright and trademark infringement
26 claims against several motion picture studios that allegedly used MOVA in producing motion
27 pictures and video games. *See Rearden LLC v. Walt Disney Company*, 293 F. Supp. 3d 963, 967–
28 68 (N.D. Cal. 2018). In this case, Plaintiffs Rearden LLC and Rearden MOVA LLC (collectively,

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1 “Rearden”) brought claims against Disney for trademark infringement and vicarious and
2 contributory copyright infringement.² ECF No. 315. Disney moved for summary judgment on all
3 of Rearden’s claims. ECF No. 421. The Court granted summary judgment in favor of Disney on
4 Rearden’s trademark infringement claim and contributory copyright infringement claim. ECF No.
5 555 at 8, 18. The Court, however, denied Disney’s motion with respect to Rearden’s vicarious
6 copyright infringement claim, finding there was a genuine issue of material fact as to whether
7 Disney had both the right and ability to control the infringing conduct and a direct financial
8 interest in the infringing activity. *Id.* at 8–12.

9 The parties proceeded to trial on Rearden’s sole claim of vicarious copyright infringement,
10 which alleged Disney was vicariously liable for DD3’s copyright infringement when DD3 used
11 MOVA to animate the Beast character in *Beauty and the Beast* (“BATB”).³ After a two-week
12 trial, the jury returned a verdict finding that Rearden owned the copyright in the MOVA Contour
13 software program during the time DD3 used that software in connection with the Beast character
14 in *BATB*, and Disney was vicariously liable for DD3’s infringement of the copyright in the
15 MOVA software program. See ECF No. 691.

16 Prior to the jury’s verdict, Disney filed a motion for judgment as a matter of law under
17 Federal Rule of Civil Procedure 50(a). See ECF No. 682. In that motion, Disney sought judgment
18 as a matter of law on the ground that Rearden had not presented legally sufficient evidence that a
19 reasonable jury could find that: (1) Rearden owned the MOVA copyright at any point during
20 DD3’s alleged infringement in this case; (2) Disney had the practical ability to control DD3’s
21 alleged infringement; (3) Disney directly financially benefited from DD3’s alleged infringement;
22 (4) there was a causal nexus between DD3’s alleged infringement and Disney’s revenue from
23 *BATB*; or (5) Rearden suffered any actual damages as a result of the infringement. See *id.* at 5.

24

25 ² Rearden also named Disney Enterprises, Inc., Disney Studio Production Services Co., LLC f/k/a
26 Walt Disney Pictures Production, LLC, Chip Pictures, Inc., Marvel Studios, LLC, MVL
27 Productions LLC, Infinity Productions, LLC, and Assembled Productions II LLC as defendants.
28 ECF No. 315 ¶¶ 8–15, 125–86.

³ Disney contracted with DD3, a visual effects company, to perform facial capture services for
several of its motion pictures. ECF No. 325 ¶¶ 98–124. DD3 was associated with SHST and
licensed the MOVA software program from SHST. *Rearden LLC v. Crystal Dynamics, Inc.*, No.
17-cv-04187-JST, 2019 WL 8275254, at *2 (N.D. Cal. July 12, 2019).

1 Disney renewed its motion pursuant to Rule 50(b) after the jury returned a verdict. *See* ECF No.
2 739. The Court found Disney could not be liable for vicarious copyright infringement as a matter
3 of law, as “Rearden failed to introduce legally sufficient evidence at trial that Disney had the
4 practical ability to identify, and therefore supervise or control, whether its vendors such as DD3
5 were infringing copyright through the use of proprietary software and/or hardware.” ECF No. 758
6 at 12. The Court denied Disney’s motion on the remaining four grounds. *Id.* at 6–17.

7 Disney now seeks fees incurred in defending against Rearden’s vicarious copyright
8 infringement claim at and after trial. *See* ECF No. 774. `

9 **II. LEGAL STANDARD**

10 Courts “may . . . award a reasonable attorney’s fee to the prevailing party” on copyright
11 claims.⁴ 17 U.S.C. § 505. This broad statutory language “clearly connotes discretion, and
12 eschews any precise rule or formula for awarding fees.” *Kirtsaeng v. John Wiley & Sons, Inc.*,
13 579 U.S. 197, 202 (2016) (quotation marks and citation omitted). Courts have “wide latitude to
14 award attorney’s fees based on the totality of circumstances in a case,” *id.* at 203, subject to two
15 restrictions:

16 First, a district court may not award attorney’s fees as a matter of
17 course; rather, a court must make a more particularized, case-by-
18 case assessment. Second, a court may not treat prevailing plaintiffs
19 and prevailing defendants any differently; defendants should be
encouraged to litigate meritorious copyright defenses to the same
extent that plaintiffs are encouraged to litigate meritorious claims of
infringement.

20 *Id.* at 202 (quotations, alteration marks, and citations omitted); *see also Fogerty v. Fantasy, Inc.*,
21 510 U.S. 517, 533 (1994) (“The automatic awarding of attorney’s fees to the prevailing party
22 would pretermit the exercise of [the Court’s] discretion.”).

23 In determining whether to award fees, courts may consider several factors, including “(1)
24 the degree of success obtained, (2) frivolousness, (3) motivation, (4) reasonableness of losing
25 party’s legal and factual arguments, and (5) the need to advance considerations of compensation
26 and deterrence.” *Shame On You Prods., Inc. v. Banks*, 893 F.3d 661, 666 (9th Cir. 2018) (citation
27

28 ⁴ This is in contrast to trademark and patent claims, for which fees may be awarded to the
prevailing party only in “exceptional cases.” 15 U.S.C. § 1117(a).

omitted). Courts must place “substantial weight on objective reasonableness,” but this “can be only an important factor in assessing fee applications—not the controlling one.” *Kirtsaeng*, 579 U.S. at 207–08. “Although objective reasonableness carries significant weight, courts must view all the circumstances of a case on their own terms, in light of the Copyright Act’s essential goals.” *Id.* at 209. A court “retains discretion” to award fees “even when the losing party advanced a reasonable claim or defense.” *Id.* at 200.

Where a party pursues a “patently meritless copyright claim,” takes an “unreasonable litigating position, or engages in “overaggressive assertions of copyright claims,” a fee award may be appropriate. *Kirtsaeng*, 579 U.S. at 205, 209. On the other hand, awarding costs alone may be sufficient to “adequately deter [a] [p]laintiff and others from bringing additional unmeritorious claims.” *Althouse v. Warner Bros. Ent.*, No. CV 13-696 RGK (SSx), 2014 WL 12599798, at *3 (C.D. Cal. June 17, 2014) (declining to award fees even after determining that the plaintiff’s litigation position was objectively unreasonable).

If the Court “decide[s] . . . an award of attorneys’ fees is appropriate,” it must then “calculate[e] the amount of fees to be awarded.” *Traditional Cat Ass’n, Inc. v. Gilbreath*, 340 F.3d 829, 832–33 (9th Cir. 2003) (footnote omitted). In determining the amount of fees awardable, the “most useful starting point . . . is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” *Transgo, Inc. v. Ajac Transmission Parts Corp.*, 768 F.2d 1001, 1027 (9th Cir. 1985) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). “Excluded from this fee calculation are hours that are not reasonably expended, i.e., hours that are ‘excessive, redundant, or otherwise unnecessary.’” *Id.* (quoting *Hensley*, 461 U.S. at 434). “Controlling precedent establishes ‘that a party entitled to attorney’s fees as a prevailing party on a particular [copyright] claim, but not on other claims in the same lawsuit, can only recover attorney’s fees incurred in [pursuing or] defending against that one claim or any related claims.’” *Traditional Cat Ass’n*, 340 F.3d at 833 (internal quotation marks and citations omitted).

III. DISCUSSION

Disney seeks fees in the amount of \$1,828,992.50, which Disney represents is “a limited and commensurate portion of the fees Disney incurred in litigating only Rearden’s vicarious

1 infringement claim from summary judgment through and after trial.” Mot. at 6. Disney argues
2 “Rearden overrepresented at summary judgement what it could deliver at trial, resulting in nearly
3 a year of avoidable litigation on a claim for which the Court ultimately held Defendant could not
4 be liable as a matter of law.” *Id.* Disney further argues that its request “represents the fees
5 incurred by only three attorneys and one paralegal at Munger, Tolles & Olson LLP (“MTO”), for a
6 limited set of trial and post-trial tasks between October 24, 2023 (the date after the Court’s denial
7 of summary judgment on Rearden’s vicarious infringement claim) and September 30, 2024, when
8 MTO commenced preparation of this Motion[,]” which “mirrors the size of the legal team that
9 Rearden had in the courtroom at trial.” *Id.*

10 **A. Prevailing Party**

11 “The prevailing party in a copyright infringement action may recover reasonable attorney
12 fees.” *Moonbug Ent. Ltd. v. BabyBus (Fujian) Network Tech. Co.*, No. 21-CV-06536-EMC, 2024
13 WL 3697030, at *2 (N.D. Cal. Aug. 6, 2024). Disney argues it “is the prevailing party on all
14 claims[,]” as it “secured dismissal of Rearden’s copyright infringement claim,” summary
15 judgment on Rearden’s contributory copyright infringement claim, “and, following an 11-day jury
16 trial, judgment as a matter of law on Rearden’s vicarious copyright infringement claim” Mot.
17 at 10. Rearden does not dispute that Disney is the prevailing party. Accordingly, the Court finds
18 Disney is the “prevailing party” with respect to its copyright claims for the purpose of 17 U.S.C.
19 § 505.

20 **B. Appropriateness of Fee Award**

21 “A court has broad equitable discretion in determining attorney [f]ees awards.” *Moonbug*
22 *Ent.*, 2024 WL 3697030, at *2. “The Supreme Court [has] identified the following non-exclusive
23 list of factors to guide the award or denial of attorney’s fees: ‘frivolousness, motivation, objective
24 unreasonableness (both in the factual and in the legal components of the case), and the need in
25 particular circumstances to advance considerations of compensation and deterrence.’” *Id.* (quoting
26 *Ets-Hokin v. Skyy Spirits, Inc.*, 323 F.3d 763, 766 (9th Cir. 2003)). “The Ninth Circuit has added
27 the following considerations: ‘the degree of success obtained, the purposes of the Copyright Act,
28 and whether the chilling effect of attorney’s fees may be too great or impose an inequitable burden

1 on an impecunious plaintiff.”” *Id.* (quoting *Perfect 10 Inc. v. Giganews, Inc.*, 847 F.3d 657, 675
2 (9th Cir. 2017)). “These factors may be considered but are not exclusive, and need not all be
3 met.” *Id.* Disney argues that “[t]he balance of these factors favor fee-shifting in the circumstances
4 of this litigation.” Mot. at 11.

5 **1. Objective Unreasonableness and Frivolousness**

6 The Court begins its analysis by considering the “reasonableness of [the] losing party’s
7 legal and factual arguments.” *Shame on You Prods.*, 893 F.3d at 666. Courts generally “give
8 substantial weight to the objective reasonableness of the losing party’s position.” *Kirtsaeng*, 579
9 U.S. at 199–200. “The mere fact that [plaintiff] lost does not establish that its litigation position
10 was objectively unreasonable.” *Simpson Strong-Tie Co. Inc. v. MiTek Inc.*, No. 20-CV-06957-
11 VKD, 2024 WL 2261947, at *4 (N.D. Cal. May 16, 2024). Rather, “[a] claim is objectively
12 unreasonable where the party advancing it should have known from the outset that its chances of
13 success in th[e] case were slim to none.” *Epikhin v. Game Insight N. Am.*, No. 14-CV-04383-
14 LHK, 2016 WL 1258690, at *5 (N.D. Cal. Mar. 31, 2016) (quotations and citation omitted).
15 Similarly, a “frivolous claim is one in which the factual contention is ‘clearly baseless,’ such as
16 factual claims that are ‘fantastic or delusional scenarios.’” *Perfect 10, Inc. v. Visa Int'l Serv.*
17 Ass’n, C 04-00371 JW, 2005 WL 2007932, at *4 (N.D. Cal. Aug. 12, 2005) (quoting *Neitzke v.*
18 *Williams*, 490 U.S. 324, 325–28 (1989)).

19 Disney does not take the position that Rearden’s vicarious copyright infringement claim
20 was objectively unreasonable or frivolous. In fact, “Disney acknowledges that the Court may not
21 consider th[is] factor satisfied in light of denying summary judgment on Rearden’s claim for
22 vicarious copyright infringement” but argues that a fee award would deter future “overaggressive
23 assertions of copyright claims[.]” Mot. at 13. Disney specifically argues that Rearden’s
24 “overaggressive theory of liability and move-profits-damages claim left [Disney] with no choice
25 but to incur substantial fees defending this case on the merits[,]” and an award of fees would
26 therefore be appropriate in this case. *Id.* Rearden counters that its “apportioned profits case,
27 based on the 8.9 percent of total shots in the film that used MOVA, was not ‘overaggressive.’”
28 Dkt. No. 776 (“Opp.”) at 18. Rearden further argues that “both parties pursued their claims and

1 defenses aggressively” and “[t]he fact that both parties aggressively pursued their claims and
2 defenses does not give rise to a finding of bad faith.” *Id.* at 19. The Court agrees with Rearden.

3 Rearden’s copyright claims in this case were not objectively unreasonable or frivolous.
4 The Court denied Disney’s motion for summary judgment on Rearden’s vicarious copyright
5 infringement claim, finding “there [was] a genuine issue of material fact as to whether Disney had
6 the practical ability to stop or limit the infringing conduct for two reasons.” Dkt. No. 555 at 9.
7 “First, the contract between DD3 and Disney secure[d] for Disney considerable control over
8 DD3’s services such that it is possible that Disney could have, as a practical matter, taken
9 affirmative steps to stop or limit DD3’s use of MOVA.” *Id.* “Second, evidence in the record
10 creates a genuine dispute of material fact as to whether Disney could have limited or stopped
11 DD3’s use of MOVA during the production process.” *Id.* at 10. That the Court ultimately found
12 “Rearden failed to introduce legally sufficient evidence at trial that Disney had the practical ability
13 to identify, and therefore supervise or control, whether its vendors such as DD3 were infringing
14 copyright through the use of proprietary software and/or hardware” does not render Rearden’s
15 claims objectively unreasonable or frivolous. *See Phoenix Techs. Ltd. v. VMware, Inc.*, No. 15-
16 CV-01414-HSG, 2018 WL 828030, at *7 (N.D. Cal. Feb. 12, 2018) (“Even though [d]efendant
17 achieved total victory at trial, the fact that a party loses is insufficient to establish objective
18 unreasonableness.”); *Mahon v. Mainsail, LLC*, No. 4:20-CV-01523-YGR, 2024 WL 5425616, at
19 *2 (N.D. Cal. Dec. 19, 2024) (“Mere loss on summary judgment, and particularly in a case that
20 was ‘close and difficult,’ does not make the case objectively unreasonable.”).

21 Additionally, Rearden’s “movie-profits-damages claim” does not warrant an award of fees.
22 Mot. at 13. Rearden “asked the jury for 8.9% of Disney’s profits as apportioned to the
23 infringements of the MOVA software copyright based on the percentage of total shots that used
24 MOVA . . .” Opp. at 19. Such a request does not strike the Court as “overaggressive,”
25 objectively unreasonable, or frivolous. This factor, to which the Court must assign “substantial
26 weight,” *Kirtsaeng*, 579 U.S. at 207, thus weighs against an award of fees.

27 ///

28 ///

1 **2. Goals of the Copyright Act**

2 The Court next considers the purposes of the Copyright Act. *See Shame on You Prods.*,
3 893 F.3d at 667; *Glacier Films (USA), Inc. v. Turchin*, 896 F.3d 1033, 1041 (9th Cir. 2018)
4 (“[B]ecause the guiding principles of the Copyright Act run throughout the other factors, [this
5 factor] remains important.”). “The goal of the Copyright Act is ‘to promote creativity for the
6 public good.’” *Glacier Films*, 896 F.3d at 1041 (citation omitted). “Inherent in the Act’s purpose
7 is that ‘a copyright holder has always had the legal authority to bring a traditional infringement
8 suit against one who wrongfully copies.’” *Id.* (citation omitted). “[F]ee awards under § 505
9 should encourage the types of lawsuits that promote’ dual purposes: ‘encouraging and rewarding
10 authors’ creations while also enabling others to build on that work.’” *Phoenix Techs.*, 2018 WL
11 828030, at *6 (quoting *Kirtsaeng*, 579 U.S. at 198).

12 Disney argues that “persevering in litigating Rearden’s copyright claims to resolution on
13 the merits and the deterrent effect of a fee award here would further the Act’s ‘primary objective’
14 of ‘encourag[ing] the production of original literary, artistic, and musical expression for the good
15 of the public.’” Mot. at 11 (quoting *Fantasy, Inc. v. Fogerty*, 94 F.3d 553, 557 (9th Cir. 1996)).
16 Disney argues that Rearden’s “unprecedented and expansive” theory of liability—“that [Disney]
17 should be held vicariously liable because one of dozens of software programs used by one of
18 hundreds of vendors in the creation of [Disney’s] copyrighted work was later found to be owned
19 by Rearden”—“would likely have chilled the creation of large-scale works, like movies and video
20 games, which now necessarily requires scores of third-party vendors.” *Id.* at 11–12. Disney
21 argues that its “efforts thus clarified the ‘boundaries of copyright law’ in a way that will ‘lead to
22 further creative pieces.’” *Id.* at 12. Rearden counters that “film studios would have been
23 encouraged by a substantial apportioned profits award to make more of an effort to detect and
24 thwart copyright infringement which would serve the purposes of the Copyright Act.” Opp.
25 at 13. Rearden further argues that “Disney and the film industry are not the only creators of
26 copyrighted content to be considered” and “[f]ee shifting here could just as likely have a chilling
27 effect on [software developers’] efforts to protect their software copyrights.” *Id.* at 13–14. The
28 Court agrees with Rearden.

1 Although “it is ‘important that the boundaries of copyright law be demarcated as clearly as
2 possible,’” it is unclear what impact, if any, Disney’s success had on “defin[ing] those
3 boundaries.” *Simpson Strong-Tie*, 2024 WL 2261947, at *6 (quoting *Fogerty*, 510 U.S. at 527).
4 That “Rearden failed to introduce legally sufficient evidence at trial that Disney had the practical
5 ability to identify, and therefore supervise or control, whether its vendors such as DD3 were
6 infringing copyright through the use of proprietary software and/or hardware” does not mean that
7 Disney, or any other movie studio, cannot be held liable for vicarious copyright infringement. It
8 only means that Rearden did not provide sufficient evidence to prove that Disney had the ability to
9 supervise or control whether DD3 was infringing Rearden’s copyrights.

10 Moreover, awarding Disney fees in this case could “deter litigants from bringing
11 potentially meritorious claims, even though those claims may be ultimately unsuccessful.”
12 *Minden Pictures, Inc. v. John Wiley & Sons, Inc.*, No. C-12-4601 EMC, 2014 WL 1724478, at *8
13 (N.D. Cal. Apr. 29, 2014) (citation omitted). That would not serve the purposes of the Copyright
14 Act. *See id.* (“[I]t is not the purpose of the Copyright Act ‘to deter litigants from bringing
15 potentially meritorious claims, even though those claims may be ultimately unsuccessful.’”)
16 (citation omitted). Accordingly, the Court finds this factor weighs against an award of fees.

17 **3. Degree of Success Obtained**

18 The Court next considers “the degree of success obtained.” *Shame on You Prods.*, 893
19 F.3d at 666. “[C]omplete success on the merits—and not on a technical defense—weighs in favor
20 of an award of attorney’s fees.” *Simpson Strong-Tie*, 2024 WL 2261947, at *3 (quotations and
21 citation omitted). Here, Disney prevailed on all of Rearden’s copyright claims, including
22 Rearden’s vicarious infringement claim. *See* ECF Nos. 60 (dismissing Rearden’s direct copyright
23 infringement claim), 555 (granting Disney’s motion for summary judgment on Rearden’s
24 contributory copyright infringement claims), 758 (granting Disney’s motion for judgment as a
25 matter of law on Rearden’s vicarious infringement claim).⁵ Although this factor weighs in favor
26 of an award of attorneys’ fees, it is not dispositive. *Simpson Strong-Tie*, 2024 WL 2261947, at *3

27
28 ⁵ “Rearden does not dispute that if viewed only from the standpoint of the Court’s JMOL order,
the success factor favors fee shifting.” Opp. at 17.

1 (“[P]revailing parties in copyright cases are not entitled to attorney’s fees as a matter of course.”).

2 **4. Motivation**

3 The Court next considers Rearden’s motivation in bringing this lawsuit. “The existence of
4 bad faith or an improper motive in bringing or pursuing an action weighs in favor of an award of
5 fees to a prevailing party.” *Epikhin*, 2016 WL 1258690, at *1. “Such a finding may be based on
6 ‘actions that led to the lawsuit, as well as on the conduct of the litigation.’” *Id.* (citation omitted).
7 “Courts have held a plaintiff demonstrates bad faith when alleging a copyright claim to secure
8 benefits other than merely addressing grievances.” *Mahon*, 2024 WL 5425616, at *4 (citation
9 omitted).

10 Disney suggests that Rearden’s motive in pursuing this litigation was to coerce settlement,
11 arguing that “Rearden’s conduct shows it ‘is in the business of litigation, not protecting [its]
12 copyright[] or stimulating artistic creativity for the general public good.’” Mot. at 12 (quoting *Bell*
13 v. *Oakland Cnty. Pools Project, Inc.*, No. 19-CV-01308-JST, 2020 WL 13695114, at *3 (N.D.
14 Cal. Oct. 14, 2020)). Disney further argues that Rearden “chose not to pursue a direct
15 infringement claim against DD3 or its affiliates” and instead “spent seven years aggressively
16 litigating secondary infringement suits against deeper pockets” *Id.* at 13. Rearden counters
17 that “Disney offers no proof that Rearden’s objective was to ‘coerce settlements’ or that it was
18 disinterested in enforcing the MOVA software copyright that Disney infringed” Opp. at 20.
19 Rearden argues that “the general public benefitted from MOVA through its use in seventeen major
20 films to animate the facts of CG characters using MOVA from 2006 until it was stolen by DD3 in
21 2013[,]” and it “filed its copyright infringement suits against the primary beneficiaries of DD3’s
22 direct infringement, the film studios that reaped massive profits from copyright infringement that
23 they supervised and had the right to control.” *Id.*

24 The record does not suggest that Rearden acted in bad faith or had an improper motive in
25 pursuing its vicarious infringement claim. Rearden “invested 6 years and over \$12 million
26 developing MOVA and its custom software.” Opp. at 13. Given Rearden’s substantial investment
27 in developing MOVA and the related software, the Court cannot say that Rearden acted in bad
28 faith or with improper motive in pursuing vicarious infringement claims against Disney—one of

1 the movie studios who “reaped massive profits from [DD3’s] copyright infringement.” *Id.* at 20.
2 Moreover, to the extent Rearden was motivated to “obtain compensation for its work[,]” such a
3 motive is not necessarily improper. *See Phoenix Techs.*, 2018 WL 828030, at *8 (“Nor would a
4 pecuniary motivation on Plaintiff’s part be improper.”).

5 Additionally, that Rearden last used MOVA Contour in 2012 does not “cast doubt on
6 [Rearden’s] motivations in bringing this lawsuit or pursuing its copyright claims to trial.” *Atari*
7 *Interactive, Inc. v. Redbubble, Inc.*, No. 18-CV-03451-JST, 2022 WL 7467297, at *2 (N.D. Cal.
8 Sept. 12, 2022). “A copyright on old software is still a copyright.” *Id.* (quoting *Phoenix Techs.*,
9 2018 WL 828030, at *8); *see also id.* (“The fact that [p]laintiff’s ‘BIOS program long ago lapsed
10 into obscurity’ does not, on its own, render worthless its copyright.”). Disney has not shown that
11 Rearden’s motivation in pursuing its vicarious infringement claims was improper. *See Mahon*,
12 2024 WL 5425616, at *4 (finding factor neutral where “[n]othing in the record support[ed] bad
13 faith, as opposed to bad judgment, or that plaintiff brought his copyright claim ‘to secure benefits
14 other than merely addressing grievances’”). Accordingly, the Court finds this factor is neutral.

15 **5. Compensation and Deterrence**

16 Finally, the Court considers “the need . . . to advance considerations of compensation and
17 deterrence.” *Fogerty*, 510 U.S. at 534 n.19. “Fee awards should ‘encourage[] parties with strong
18 legal positions to stand on their rights and deter[] those with weak ones from proceeding with
19 litigation.’” *Simpson Strong-Tie*, 2024 WL 2261947, at *5 (quoting *Kirtsaeng*, 579 U.S. at 205).
20 “To this end, courts may award attorney’s fees when plaintiffs press factually or legally baseless
21 claims to deter others like them.” *Id.* “Courts may engage in ‘specific deterrence’ by imposing
22 attorney’s fees ‘to deter a party that . . . has previously filed non-meritorious actions[,]’” or
23 “‘general deterrence’ by ‘considering whether an award of attorneys’ fees will positively impact
24 the behavior of future litigants and potential litigants other than the parties to the case.’” *Mahon*,
25 2024 WL 5425616, at *3 (citations omitted).

26 Disney argues that “awarding fees here would ensure [it] is ‘properly compensated for
27 defending against overreaching claims of copyright infringement and pressing a defense’ that will
28 result in the production of more creative works for the public’s enjoyment.” Mot. at 14 (quoting

1 *Tresóna Multimedia, LLC v. Burbank High Sch. Vocal Music Ass'n*, 953 F.3d 638, 654 (9th Cir.
2 2020)). Disney further argues that awarding fees “may [] deter Rearden or future litigants from
3 bringing secondary infringement lawsuits that are designed not to promote creative expression but
4 to pressure settlements[,]” which is “entirely consistent with the purpose of the Copyright Act.”
5 *Id.* (quotations and citation omitted).

6 The Court finds no need for deterrence here. While a “successful defense of a copyright
7 infringement action may further the policies of the Copyright Act every bit as much as a
8 successful prosecution of an infringement claims by the holder of a copyright[,]” *Choyce v. SF*
9 *Bay Area Indep. Media Ctr.*, No. 13-cv-01842-JST, 2014 WL 5597274, at *5 (N.D. Cal. Nov. 3,
10 2014), “plaintiffs acting in good faith and with potentially meritorious claims should not be
11 deterring from seeking to protect their copyrights based on the fear of a large attorney’s fees award
12 should the Court” rule against them. *Epikhim*, 2016 WL 1258690, at *8. Rearden’s “claims were
13 not frivolous or objectively unreasonable, and [Rearden] did not act in bad faith.” *Id.*; *see also*
14 *supra* Sections III.B.1–2, 4. The Court thus finds that the deterrence purposes of the Copyright
15 Act would not be served by a fee award in this case.

16 The need for compensation also does not support an award of fees. “[D]efendants who
17 seek to advance a variety of meritorious copyright defenses should be encouraged to litigate them
18 to the same extent that plaintiffs are encouraged to litigate meritorious claims of infringement.”
19 *Epikhim*, 2016 WL 1258690, at *8 (quoting *Fogerty*, 510 U.S. at 527). “An award of fees may
20 provide such encouragement[,]” but here, “such encouragement is unnecessary because [Disney]
21 had ‘ample incentive’ to vigorously defend” against Rearden’s claims of vicarious copyright
22 infringement. *Id.* (citation omitted); *see also* *Bisson-Dath v. Sony Computer Ent. Am. Inc.*, No.
23 CV-08-1235 SC, 2012 WL 3025402, at *3 (N.D. Cal. July 24, 2012) (“Here, Defendants had
24 ample incentive to vigorously defend its multibillion dollar God of War franchise against claims
25 of infringement.”); *Phoenix Techs.*, 2018 WL 828030, at *8 (finding this factor neutral and noting
26 defendant had ample incentive to defend against infringement claims).

27 Taking all the factors together, the Court concludes that a fee award is not appropriate.
28 Accordingly, the Court need not address whether Disney’s requested fees are reasonable.

CONCLUSION

The Court concludes that an award of attorneys' fees under the Copyright Act is not warranted in this case. Accordingly, Disney's motion is denied.

IT IS SO ORDERED.

Dated: July 31, 2025


JON S. TIGAR
United States District Judge

United States District Court
Northern District of California